APPLICATION OF THE EXCLUSIONARY RULE OF EVIDENCE IN INDIA: A COMPARATIVE ANALYSIS WITH U.S. AND U.K. JURISDICTIONS

SYNOPSIS OF THE THESIS

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I. INTRODUCTION

The rule of evidence which excludes such evidence deemed illegal, improper, irrelevant, untrustworthy, unauthentic or unreliable are known as the Exclusionary Rule of Evidence.

In the Indian legal system, the relevancy of evidence is the main consideration for the court to admit or reject the evidence. Merely because the Evidence is obtained by unlawful or improper means does not make such evidence inadmissible in India. The traditional approach of the Indian Courts has been that in the absence of a statutory or constitutional provision which provides for excluding such types of evidence, the mere fact that the evidence was obtained illegally is of no consequence, although, such evidence may, at times be obtained by adopting unfair and illegal means violating the basic human rights and other constitutional rights of the citizens. This scenario, coupled with the practical experience from the profession of Advocacy, inspired the researcher to study the application of the Exclusionary Rule of Evidence in India and compare it with U.S. And U.K. Jurisdictions.

II. SIGNIFICANCE OF THE STUDY

The Exclusionary Rule of Evidence have not been reviewed sufficiently in India. Although the Law Commission in its 94th report formulated an entire report on this, suggesting the insertion of additional provisions in the Indian Evidence Act, however, no concrete steps have been taken either by the Legislature or the Judiciary. The concept in totality is not incorporated in any

of our vast volumes of legislations.

III. LITERATURE REVIEW

1. Kulshreshtha, N. (2021) in his paper "Exclusionary Rules (Past, Present & Future) - A Comparative Study between USA, England & Wales and India" discussed the past, present and future of exclusionary rules of evidence in the USA, England & Wales and India by doing a comparative study. The above three countries were chosen by him in order to study the appropriate approach to excluding evidence between the extreme positions of USA and India on the one hand and England & Wales on the other hand. The paper begins by retracing the historical development of the exclusionary rules to their present status in each of the above jurisdictions, with primary focus on rules relating to illegal searches/seizures and illegal interception with respect to cellular technology. It then looks into the relevant literature on the effects of those exclusionary rules and whether they achieve the intended purpose. Finally, it assesses the need for these rules and whether there are other ways to deal with police illegalities and indiscipline.

Though the paper compares the applicability of the exclusionary rules of evidence in India, U.S. and U.K., however, the paper lacks detailed research on whether any change in the existing law in India is required or not. Moreover the research is limited to admissibility of evidence collected by the investigating agencies and not the evidence collected by private individuals which would be covered in this research paper.

2. Marya, P. (2019) in his article A Relook At The Admissibility Of Illegally Or Improperly Obtained Evidence dealt with the position of law

regarding the exclusion of evidence that has been obtained illegally or improperly in a criminal trial. The right to privacy having been declared a fundamental right by the Supreme Court comes in direct conflict with the admissibility of illegally obtained evidence in India. In fact, Indian courts have consistently admitted illegally obtained evidence in criminal trials, unlike other jurisdictions where such evidence is excluded. The approach of Indian courts so far has been, that in the absence of a specific statutory or constitutional provision which provides for such exclusion, the fact that the evidence was obtained illegally is of no consequence to its admissibility in a criminal trial. The paper revisits the recommendations of the 94th Law Commission Report, 1983, in light of the right to privacy being recognised as a fundamental right under Article 21 of the Constitution. In order to do so, this paper analyses the current position of law as propounded by the judiciary, and delve into the rationale for such pronouncements. Then the author examines the analysis of the Law Commission Report of 1983, and also examines whether or not the recommendations given at that time can be the solution required today. The paper further analyse the judgment in Justice K. S. Puttaswamy v. Union of India and the impact of the right to privacy on this aspect of evidence law.
The paper of (Marya, 2019) is restricted to the evidence collected in violation of right to privacy and does not address the broader problem of admissibility of illegally obtained evidence in violation of constitutional rights of citizens. Moreover the paper lacks any comparison with other developed countries where the exclusionary rule is applicable.

3. Behl, D. (2021) in his paper Admissibility of Illegally Obtained

Evidence has revealed that often authorities indulge in illegal means for collecting evidence, and in certain situations this evidence is sufficient for the culprit to be held guilty. There are several methods by which evidence may be illegally obtained, e.g., by eavesdropping, illegal search, violating the body of a person and other methods which shock the human conscience as well as one's fundamental rights. Under the Indian Law there is no statutory prohibition against illegally obtained evidence under either the Indian Evidence Act of 1872 or the Code of Criminal Procedure of 1973. Therefore, the Indian judicial system follows the traditional approach according to which the means of obtaining evidence does not affect the admissibility within the court.

This paper of Behl does not compare the India law relating to admissibility of evidence with other jurisdictions and the same with be covered in my research.

4. Yeager, D. B. (2023) in his article A History of Fruit of the Poisonous Tree (1916-1942) explains the exclusion from trial of evidence (the fruit) derived from unconstitutional police practices (the tree). The U.S. Supreme Court first deployed the metaphor in 1939; exclusion of fruits by any other name, however, dates to before the Court began reviewing state convictions. This paper is restricted to the history of the exclusionary rule of evidence in the U.S. There is no comparison with other jurisdictions nor does it cover the Indian context. The same will be covered in my research.

5. In the 94th Report of the Law Commission of India, Justice K.K. Mathew compared the exclusionary rule of evidence as applicable in various

jurisdictions including U.S. and U.K. and proposed insertion of the following section 166A in the Indian Evidence Act. The Chapter 10A proposed by the Law Commission in its report is reiterated below:

"Evidence Obtained Illegally or Improperly

166A. (1) In a criminal proceeding, where it is shown that anything in evidence was obtained by illegal or improper means, the court, after considering the nature of the illegality or impropriety and all the circumstances under which the thing tendered was obtained, may refuse to admit it in evidence, if the court is of the opinion that because of the nature of the illegal or improper means by which it was obtained its admission would tend to bring the administration of justice into disrepute.

(2) In determining whether evidence should be excluded under this section, the court shall consider all the circumstances surrounding the proceedings and the manner in which the evidence was obtained, including-

(a) the extent to which human dignity and social values were violated in obtaining the evidence; (b) the seriousness of the case; (c) the importance of the evidence; (d) the question whether any harm to an accused or others was inflicted wilfully or not; and (e) the question whether there were circumstances justifying the action, such as a situation of urgency requiring action to prevent the destruction or loss of evidence."

6. Fields, C. D. (2017) in his book *Law on Admission and Confessions* reveals that confession may be defined as an out of Court statement by a suspect in which he or she committed or participated in the commission of a crime and which makes it clear that there is no defense in law that would make his or her conduct lawful. A confession is an acknowledgment in

express terms by a party in a criminal case of his guilt. More so, a confession implies an admission of every essential element necessary to establish the crime with which the defendant is charged.

The study of Admissions and Confessions extracted unlawfully and illegally may fall within the purview of exclusionary rule of evidence and hence within the scope of this research paper.

7. V. Sarathi in his book the Law of Evidence clarifies and explains the complicated rules governing the law of evidence in a straightforward and easily comprehensible style. While maintaining the flair of this admired work, the revising author has updated the current edition of the book with the latest case law and statutory changes. This book shall be essential for the researcher in reviewing and understanding the various provisions of the Indian Law of Evidence.

8. Gless, S., & Richter, T. (2019) in their book *Do Exclusionary Rules Ensure A Fair Trial?* explains that the criminal justice systems are barometers of social development. In all criminal justice systems, there exists a strong public interest in determining the truth due to the assertion that a determination of innocence or guilt is based upon "true" facts. This pursuit of "the truth" has led to procedural rules that expose both suspects and witnesses to coercive measures that often interfere with individual rights.

In recent decades, human rights have come to the forefront in criminal justice systems around the world, but at the same time more and more jurisdictions have adopted exclusionary rules. This book contains country reports on Germany, Switzerland, P.R. China, Taiwan, Singapore, and the U.S., along

with contributions discussing the rationales behind exclusionary rules, legal practices, or potential alternatives, all address the question of whether, and under what circumstances, the use of exclusionary rules can be an effective means for protecting human rights in criminal proceedings.

IV. RESEARCH GAP

Despite the dire need of a comparative study of the exclusionary rule of evidence in India, U.S. and U.K., there has not been enough documentation and research. During the course of research, the researcher barely found any detailed Indian research work comparing the applicability of the exclusionary rule of evidence in India, U.S. and U.K. in spite of researching through credible law libraries and research databases. This further strengthened the desire to make some credible research on the topic. In India the admissibility of evidence depends mostly on its relevancy whereas in the U.S. the Fourth amendment to the Constitution safeguards the public's legitimate or reasonable expectation of privacy and excludes illegally obtained evidence by applying the principle of "fruit of a poisonous tree". The U.K. Police and Criminal Evidence Act 1984 also has a specific provision under Section 78 which gives the court a discretionary power to exclude evidence, if admission of such evidence would have such an adverse effect on the fairness of proceedings that the court ought not to admit it. In India the 94th Law Commission report in the year 1983 suggested amendment in the Indian evidence Act to incorporate similar provisions as that in the U.S. and U.K. however there has neither been any such nor any research on the need to incorporate the exclusionary rule of evidence in India as that in the U.S. and U.K.

V. STATEMENT OF THE PROBLEM

The researcher has taken up this study to compare legislations relating to the exclusionary rule of evidence in India U.S. and U.K. that deal with the admissibility of illegally obtained evidence. This research aims to put forth a way in which the Exclusionary Rule of Evidence can be effectively implemented in India to protect the constitutional rights of it's citizens. There is a need to look back and re-consider the recommendations of the 94th Law Commission Report. A review of existing legislations concerning admissibility of evidence is required in India to enable the courts to exercise due power to reject and refuse such evidence that is obtained in blatant violation of constitutional rights of the citizens particularly with massive use of technology in every sphere of life.

VI. RESEARCH QUESTIONS

1. What is the existing law relating to the Exclusionary Rule of Evidence in India, U.S. and U.K.?
2. How admissibility of illegally obtained evidence affects the constitutional rights of the citizens?
3. Which statutory provisions in India may be amended to avoid unfairness to the party against whom illegally obtained evidence is sought to be used?

VII. OBJECTIVES OF THE STUDY

Followings are the main objectives of the present study:

1. To study the present law in India relating to admissibility of evidence

and compare it with the U.S. and U.K.

2. To examine the effects of admitting illegally obtained evidence on the constitutional rights of citizens of India.

3. To assess the need for amending the statutory provisions to avoid unfairness to the party against whom the illegally obtained evidence is sought to be used.

VIII. HYPOTHESIS

H1. The Investigating officers in India are not aware of the exclusionary rule of evidence as Hon'ble Courts in India usually admit all relevant evidence.

H2. Present law in India relating to the exclusionary rule of evidence needs a reform.

IX. RESEARCH METHODOLOGY

Though there are several methods of research involved depending upon the necessity of research, the present research is majorly doctrinal and comparative in nature with certain chapters requiring empirical study as well. The researcher will study the various legislations of India, U.S. and U.K. relating to the exclusionary rule of evidence and then examine the various judgments passed by the Hon'ble Courts of India, U.S. and U.K. to conduct a detailed doctoral and comparative research on the exclusionary rule of evidence.

The researcher will by conduct an empirical study through questionnaires and interviews of the Hon'ble Judges in India and the investigating officers to examine the effects of obtaining and admitting illegally obtained evidence on

the constitutional rights of the citizens of India. The researcher would apply cluster sampling procedures and data analysis techniques to do the empirical part of his research.

Since the concept of exclusion of illegally obtained evidence is not much applicable in India, and has been present in other countries such as U.S. and U.K. since a long period of time, this research would be helpful in gaining insights on the exclusionary rule in India and compare it with U.S. and U.K. as they have specific provisions relating to the exclusionary rule of evidence. This study should be helpful in understanding the similarities and contrasts between the legal systems, and examine need for implementing the same in India to avoid unfairness to the party against whom the illegally obtained evidence is sought to be used.

X. EXPECTED OUTCOME OF THE STUDY

It has been observed that the Hon'ble Courts in India assign absolute value to relevancy of evidence while considering its admissibility. The general approach while deciding the cases is that the courts deem the provisions of the Indian Evidence Act to be exhaustive, and hesitate to go beyond their purview. Fearing the release of guilty people on grounds of technicalities, Indian courts in almost all the cases admit all relevant evidence irrespective of the manner in which it has been obtained. Due to the factor of permissibility of illegally obtained evidence, the investigating agencies are no longer determined to strictly comply with lawful procedure and sometimes even violate the fundamental rights of the citizens to obtain the evidence. This study expects to highlight the need to review and compare the Indian evidence law with U.S. and U.K. to empower the courts in India for appropriate

implementation of the exclusionary rule of evidence to protect the constitutional rights of citizens of India.

XI. THE SCHEME OF CHAPTERISATION

The scheme of the chapters is divided into six parts that detail the study of the research topic. Following is the detailed chaptalization of the research topic:

Chapter I

This chapter introduces the research topic. In the first part of this chapter, the thought behind the topic is outlined. It also states the reason due to which the researcher has chosen this topic. Moreover, it explains why this topic is researchable and underlines the foundation of the study.

The later part of this chapter talks about the research methodology in the present research. It enumerates the significance of the study, the scope of the study, the statement of problem, the hypothesis and the methodology used in the research.

Chapter II

The second chapter is “The Exclusionary Rule of Evidence and the principles of Jurisprudence”. This chapter goes on to discuss the principles of jurisprudence and the historical background which influenced the emergence of the Exclusionary Rule of Evidence.

Chapter III

The third chapter is “Indian Legal Framework: Present Position.” This chapter is dedicated to the Indian scenario. The researcher has made an

attempt to cover all aspects of Evidence Law relating to the exclusionary rule of evidence in this chapter. India falls within the category of common law nations that have adopted the strictest approach in taking of evidence, and with an absence of any statutory or constitutional provision that would exclude illegally obtained evidence, the impropriety of the evidence does not render it inadmissible.

Chapter IV

The fourth chapter is "Legal position relating to the exclusionary rule of evidence in U.S. and U.K. This chapter studies and discusses the present position of applicability of the rule in U.S. and U.K. and compares the same with the Indian Law.

Chapter V

The fifth chapter discusses the relationship between the exclusionary rule of evidence and the constitutional rights of citizens. This chapter discusses the role of exclusionary rule of evidence in protecting the constitutional rights of the citizens. The researcher discussed the various judgments in detail and explained how the lack of legislation to implement the exclusionary rule of evidence results in violation of constitutional rights of the citizens.

Chapter VI

The sixth chapter is "conclusion and recommendation". It is the humble opinion of the researcher that a lot has been achieved in India with respect to the protection of constitutional rights. Yet, there is still a need to look back at the recommendations of the 94th Law Commission Report. A balance needs

to be maintained between the delivery of justice and protection of constitutional rights in order to truly safeguard the citizens from violation of their constitutional rights. In suggestions, the researcher has attempted to make recommendation to empower the courts in India for implementation of the rule to protect the constitutional rights of citizens.

XII. LIMITATIONS OF THIS RESEARCH

As mentioned, the area concerning the exclusionary rule of evidence has very limited literature be it in India or U.K. and U.S. The present study undertaken by the researcher can act as a foundation for future researchers.

XIII. REFERENCES

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